IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1734 of 2004
in
SPECIAL CIVIL APPLICATION No 8126 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORPORATION
Versus
ATMARAM B PATEL

Appearance:
MR DG SHUKLA with MS ASMITA PATEL for
NANAVATI & NANAVATI for the Appellant
MR RA PATEL for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 16/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

The appellant - Ahmedabad Municipal Corporation (hereinafter referred to as "the Corporation") has challenged the judgment and order dated 24th September, 2003 passed by the learned Single Judge in above Special Civil Application No.8126/1991.

It appears that on 20th January, 1967 the Corporation passed a resolution to send its library staff for training in Library Science conducted by the Gujarat University. It was resolved that such training should be given at the expense of the Corporation and that on returning from the training the concerned employee shall execute a bond to serve the Corporation atleast for 5 years. It was also resolved that the concerned employee shall be given the benefit of higher pay-scale as and when he reaches the maximum in the existing pay-scale. The respondent then in the pay-scale of Rs.145-245 was sent for such training. On return from the training he executed the bond of service for 5 years as required. He, however, was not given the benefit of the higher pay-scale as assured. He, therefore, preferred Special Civil Application No.1679/1976 before this Court. This Court (Coram: N.H.Bhatt, J.), by judgment and order dated 13th November, 1978, allowed the said writ petition. The Corporation was directed to implement the Resolution dated 20th January, 1967 and to grant the respondent the senior time-scales as set out in the judgment as modified from time to time with effect from February 14, 1972. It further appears that in compliance with the said judgment, on respondent's reaching the stage of Rs.245 in the existing pay-scale of Rs.145-245, he was placed in the higher pay-scale of Rs.175-280 with effect from 14th February, 1972. The pay of the respondent was revised to Rs.255 in the scale of Rs.175-280. In view of Shri I.G.Thakore award the Corporation revised the pay-scales of its employees with effect from 1st January, 1976. By communication dated 24th May, 1976 the respondent opted for revision of pay with effect from 14th February, 1977. Accordingly, the respondent was given the benefit of revision of pay with effect from 14th February, 1977 and his pay fixation was made accordingly.

Feeling aggrieved by the pay fixation at Rs.255 in the scale of Rs.175-280, the respondent moved Civil Application No.4356/1985. According to the respondent, in the pay-scale of Rs.175-10-245-15-190 as on 14th

February, 1972, his pay ought to have been fixed at Rs.260 and not at Rs.255 as was done by the Corporation. The respondent, therefore, prayed that the pay of the respondent as on 14th February, 1975 be fixed at Rs.305. The Corporation also moved Misc. Civil Application No.396/1985. According to the Corporation the existing pay-scale of Rs.175-10-265-15-280 was erroneously referred to in the above writ petition as Rs.145-10-245-15-290. The Corporation, therefore, prayed for rectification of the said error. The said application came to be rejected by the learned Judge (Coram: N.H.Bhatt, J.) on 26th August, 1985. The learned Judge observed that, "...Had the matter been before me at large as it was in the year 1978 when I set upon to decide the matter, I would have very willingly accepted the submission of Mr.Panchal, but today I find that when seven years have already followed by the judgment of this Court, right or wrong or indifferent, had been taken lying down by the Corporation, it is too late in the day for the Corporation now to tell the court that what the court treated as the resolution was not a resolution."

As the respondent was dissatisfied with the pay fixation on implementation of the pay revision with effect from 14th February, 1977; he preferred the above Special Civil Application No.8126/1991 with a prayer for direction to rectify the error in pay fixation. The petition was contested by the Corporation. According to the Corporation, pursuant to the request made by the respondent, he was given the benefit of pay revision with effect from 14th February, 1977 and was placed in the revised scale of Rs.425-700 (corresponding the pre-revised scale of Rs.175-280) and Rs.475-750 (the higher scale payable to senior technical assistant corresponding the pre-revised scale of Rs.195-320) provided for graduate and higher qualified employees in accordance with Shri I.G.Thakore award. On reaching the age of superannuation the respondent retired from service on 30th April, 1989.

At the time of hearing of the said petition the respondent confined his claim to implementation of the above referred earlier judgment dated 13th November, 1978. The learned Single Judge, therefore, by impugned order, directed the Corporation to grant the benefit of the higher pay-scale referred to in paragraph 2 of the judgment dated 13th November, 1978 and to give the benefit of corresponding pay revision under Shri I.G.Thakore award. Feeling aggrieved, the Corporation has preferred the present Appeal.

In the aforesaid judgment dated 13th November, 1978 the learned Judge had referred to the resolution of the Corporation dated 20th January, 1967 and had issued direction to the Corporation to implement the said Resolution dated 20th January, 1967. In the above referred Civil Application No.4356/1985 the respondent did admit that, "...In implementation of the judgment he was placed in the next higher grade of Rs.175-10-245-15-290. He had reached and blocked at the maximum of Rs.245 in the former grade of 145-245 on 14.2.1971. Therefore in the next higher grade viz. Grade of Rs.175-245-15-290 he was placed at the stage next higher to that of Rs.245. In fact the petitioner should have been placed at the stage of Rs.245 plus 15-260. But on account of error he was placed at the stage of Rs.245 plus 10-255. The increment of Rs.15/- was erroneously calculated at Rs.10/-. This is the mistake to be rectified."

Thus, it is apparent that the respondent did admit that the above judgment dated 13th November, 1978 was implemented and the respondent was given the benefit of higher pay-scale of Rs.175-290. However, while calculating the increment due to the respondent, the increment was calculated at Rs.10 and not at Rs.15 i.e. instead of Rs.255 his pay ought to have been fixed at Rs.260. The only grievance of the respondent was with respect to the said pay fixation at Rs.255. On perusal of the documents on record i.e. the pay bills and the recommendations made under Shri I.G.Thakore award, it is apparent that the prevalent higher pay-scale was Rs.175-10-265-EB-15-280 and not Rs.175-10-245-15-290 as averred by the respondent. The respondent indeed was given the benefit of the said higher pay-scale of Rs.175-10-265-15-280. His pay was, therefore, rightly fixed at Rs.255 in the said pay-scale. Such pay fixation having been made, the respondent had also been given the benefit of pay revision under Shri I.G.Thakore award with effect from 14th February, 1977 as requested by the respondent. Since then, the respondent had also been given the benefit of higher pay-scale of Rs.475-750. In our view, this having been done by the Corporation, the Corporation had fully complied with the above referred judgment dated 13th November, 1978. On the date of the petition the respondent had no legitimate grievance with respect to the compliance with the said judgment dated 13th November, 1978. In fact, the only prayer that the respondent had made was with respect to the pay fixation in the revised pay-scale as on 14th February, 1977. According to the respondent the respondent ought to have

been in the pre-revised scale of Rs.225-420 and that on 14th February, 1977 he ought to have been placed in the corresponding revised scale of Rs.650-1040.

At the time of hearing, the respondent had given-up the prayer made in the petition and had confined his prayer to the implementation of the aforesaid judgment dated 13th November, 1978 passed in Special Civil Application No.1679/1976. This Court was, therefore, not called upon to examine whether the respondent was entitled to the revised pay-scale of Rs.650-1040 as claimed by him. As discussed hereinabove, the above referred judgment dated 13th November, 1978 was complied with by the Corporation. No further order was, therefore, required to be made in the above Special Civil Application No.8126/1991.

In view of the above discussion, the Appeal is allowed. The impugned judgment and order dated 24th September, 2003 passed by the learned Single Judge in Special Civil Application No.8126/1991 is set-aside. The Special Civil Application No.8126/1991 is dismissed. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

(S.R.Brahmbhatt, J.)

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